IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3082 OF 2004

Baycity Resorts Pvt. Ltd. & Ors. .....Petitioners

Versus

The Greater Bombay Co-operative Bank Ltd. & Anr. ... Respondents

Mr. Prakash Ganwani instructed by M/s. Zohair & Co. for the Petitioners

Mr. Y.S. Jahagirdar with Mr. K.G. Munshi instructed by M/s. S. Satpute & Co. for Respondent No. 1.

CORAM: **DALVEER BHANDARI, C.J., &**
DR. D.Y. CHANDRACHUD, J.
DATE: DECEMBER 14, 2004.

P.C.

1. The petitioners have approached this Court with the prayer that the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the Act") be declared null and void. The petitioners have also prayed that the order dated 30th October, 2004 passed by the chief

Metropolitan Magistrate, Esplanade, Mumbai, under Section 14 of the Act, as also the notice dated 2nd November, 2004 issued by respondent No.2 pursuant thereto be quashed.

2. In view of the judgment of the Supreme Court in *Mardia Chemicals Ltd. v. Union of India*, reported in AIR 2004 SC 2371, we find no merit in the challenge of the petitioners regarding the provisions of the Act.

3. The brief facts of the case are reproduced hereunder:-

The petitioners in the year 2000, availed of term loan of Rs.5 crores, repayable in fifty instalments of Rs.10 lakhs. The petitioners executed Loan Agreement with the first respondent and, *inter alia,* executed Deed of Mortgage in respect of the property to secure the said facility. The petitioners were irregular in making repayment of instalments that fell due and thereby failed and neglected to re-pay the amount to the respondent-bank. In view thereof, the loan of the petitioners was classified as “Non Performing Assets” in or about March, 2002 as per Reserve Bank of India guidelines. The petitioners have failed and neglected to re-pay the amount due under the loan account or to regularise the loan account despite several

opportunities granted to the petitioners by the respondent-bank. Ultimately, the respondent-bank initiated proceedings under Section 101 of the Maharashtra Co-operative Societies Act, 1960 for issuance of Recovery Certificate.

4. The first respondent also initiated proceedings under Section 69 of the Transfer of Property Act, 1960, and put up the property mortgaged to the bank for auction.

5. The petitioners filed a suit, being No. 3017 of 2003, wherein they had taken out Notice of Motion No. 2810 of 2003 for ad-interim relief against the first respondent from proceeding to sell the mortgaged property under Section 69 of the Transfer of Property Act, which was rejected by this Court. The petitioners, thereafter, once again, filed a dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960, challenging the sale, wherein the petitioners filed minutes, undertaking to pay Rs.50 lakhs on or before 21st September, 2004. The petitioners have not honoured the undertaking given to the Court, and till date, as per the Bank, the petitioners paid only Rs.1,54,18,454/-, and remaining amounts, despite undertaking to the Court on two occasions, have not been paid.

6. It may be pertinent to mention that minutes of meeting dated 25th September, 2003 at the Bank's Corporate Office, Mumbai, reveal that the Bank agreed to give one more chance to the Company on following conditions:-

On signing the minutes of meeting, the company should make payment of Rs.11 lakhs immediately. After making the payment, the Bank shall withhold its action for the time being. The revised schedule of payment was:

In October, 2003	-	Rs.65 lacs
In November, 2003	-	Rs.80 lacs
In December, 2003	-	Rs.56 lacs

		Rs.201 lacs

and also to regularise its loan account before 31st March, 2004.

7. In the minutes of the meeting, it was mentioned that the Company agreed to hand over peaceful possession of the mortgaged property immediately on failure to comply with the terms of minutes of meeting. Neither the amount, as undertaken, was paid, nor possession of the mortgaged property was given.

8. It is pertinent to mention that on 8th July, 2004, in order to attempt to

put an end to this matter, the Company proposed the following interim Consent Terms:

> " (1) The Disputants (Company) undertake to pay to the Opponent (Bank) an amount of Rs.50,00,000/- (Rupees Fifty Lacs only) on or before Tuesday the 20th July 2004.
>
> (2) The Disputants also undertake to pay to the Opponent Bank further amount of Rs.2,50,00,000/- (Rupees Two Crores Fifty Lacs only) within a period of two months from 16th July 2004.
>
> (3) The Opponent Bank shall not proceed with the sale of the mortgaged properties for a period of two months from 16th July 2004 or before 20th September 2004.

(4)If there is default in payment of amount as specified in Clause (1) or in clause (2), then the Application for the interim reliefs filed in this case shall stand disposed of as rejected.

(5)After payments as per clause Nos. (1) & (2) above the Disputants undertake to give to the Opponent Bank viable proposal for repayment of the balance amount."

9. The learned counsel for the first respondent submitted that these Consent Terms have also not been complied with. He submitted that the petitioners have never honoured the undertaking given to the Court.

10. The learned counsel for the petitioners submitted that the petitioners have already paid, towards the loan, Rs.1,76,00,000/-, and they are prepared to pay the remaining amount in monthly instalments in one year. The learned counsel appearing for the first respondent submitted that in view of the past conduct, the first respondent cannot agree to another undertaking by the petitioners.

11. On consideration of the totality of the facts and circumstances, we see no reason to interfere in our extra-ordinary jurisdiction under Article 226 of the Constitution. This petition deserves to be dismissed, and we order accordingly. The ad-interim order dated 19th November, 2004 stands vacated.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.